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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 12 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

To: The Commission

**REPLY COMMENTS OF AT&T CORP. REGARDING SCOPE OF
CALEA CAPABILITIES**

On April 20, 1998, the Federal Communications Commission ("Commission") released a Public Notice requesting comment on the scope of the assistance capability requirements of the Communications Assistance for Law Enforcement Act ("CALEA") raised by the Center for Democracy and Technology ("CDT") Petition for Rulemaking under Sections 107 and 109, filed March 26, 1998 ("CDT Petition") and the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI")(collectively, "DOJ") Joint Petition for Expedited Rulemaking, filed March 27, 1998 ("DOJ Petition").¹ AT&T Corp., for itself and AT&T Wireless Services, Inc. ("AWS"), (collectively "AT&T"), pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. §1.405, submitted comments urging the

¹ Public Notice, DA 98-762, In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213 (released April 20, 1998) (the "Public Notice") at 4.

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Commission to reject DOJ's proffered rule and punch list of expanded surveillance capabilities and to support the narrow reading of CALEA's requirements that Congress intended as embodied in the JSTD-025, the industry "safe harbor" standard.²

First, AT&T joins the overwhelming consensus reflected in public comment that DOJ's punch list goes too far. For its part, DOJ produced no legal rationale in its capability comments for its expansive reading of CALEA, choosing instead to comment on the petitions and earlier responses of others in this Docket.³ Industry and other public commenters have made a compelling case that the DOJ punch list of capabilities is not required by CALEA, whereas DOJ has made only a showing of how beneficial the capabilities would be to future surveillance, plainly not a recognized tool of statutory construction to aid the Commission in its task. Thus, there is little substance from DOJ in its capability comments regarding the scope of the assistance capability requirements that warrants reply here.

Two points, however, do warrant additional comment. First, industry has supported uniformly a remand of any changes to the industry standard that the Commission might find necessary. DOJ has opposed it because, in essence, they want the Commission to

² AT&T also requested that the Commission frame its order adopting a standard carefully to ensure that only covered telecommunications carriers are affected. In particular, AT&T asserted that its Cellular Digital Packet Data ("CDPD") service is not subject to CALEA's capability requirements, because it permits users to retrieve stored information from information storage facilities and provides net protocol conversion processing, along with Internet access, and thus qualifies as an "information service."

³ See DOJ Comments Regarding Standards for Assistance Capability Requirements, CC Docket No. 97-213, filed May 20, 1998 [hereinafter "DOJ Comments"].

enact into rule the technical solutions they desire rather than submit high level requirements to the consensus process of industry standards-making. The Commission should consider the role DOJ asks it to play -- standards broker for an incredibly diverse communications industry -- and the delay such a process will cause in implementing any required changes to the standard. If the Commission requires any modifications to the standard -- and AT&T urges against it on the substantive grounds set out in its initial comments -- then the Commission can and should expect the industry to faithfully and expeditiously implement them.

Second, Section 107 requires the Commission's capability rule to provide for the most cost-efficient implementation of CALEA, minimize impacts on subscriber rates and protect the privacy of communications not authorized to be intercepted. DOJ does not even address these Section 107 factors in their comments. This is emblematic of DOJ's disregard for the cost of compliance and their desire to obtain the enhanced surveillance services they desire at the expense of subscribers and a growing, competitive telecommunications industry. In the event that the Commission determines that any punch list feature is required, it should conduct a thorough review of the DOJ proposed rule to ensure that the rule complies with the Section 107 requirements.

I. THE COMMISSION SHOULD REMAND ANY REQUIRED STANDARDS DEVELOPMENT TO TR-45.2

In its comments, AT&T strongly supported remand of any changes to the industry standard to TR-45.2, the committee that drafted the industry standard in the first

place.⁴ Industry overwhelming supported this approach.⁵

Conversely, DOJ complains that a remand "would gratuitously delay promulgation of adequate standards."⁶ The argument is unfathomable because TR-45.2 drafted the current industry standard and would be best situated to ensure that any of the Commission's changes are faithfully implemented and compatible with the basic document. Further, DOJ's proposed rule has been criticized roundly for its lack of technical merit or clarity.⁷ The Commission should not put itself in the position of reconciling technical comments from all segments of industry when a more efficient process is available.

DOJ further protests that CALEA does not expressly permit a remand to

⁴ Comments of AT&T Corp. Regarding Scope of CALEA Capabilities, CC Docket No. 97-213, filed May 20, 1998, at 15-17 [hereinafter "AT&T Comments"]. Unless otherwise noted, all comments referenced herein are filed under CC Docket No. 97-213.

⁵ See, e.g., Comments of AirTouch Communications, Inc., filed May 20, 1998, at 27 [hereinafter "AirTouch Comments"]; Comments of the Cellular Telecommunications Industry Association Regarding the Scope of CALEA Capability Requirements, filed May 20, 1998, at 18-22 [hereinafter "CTIA Capability Comments"]; Comments of Nextel Communications Inc., filed May 20, 1998, at 13 [hereinafter "Nextel Comments"]; Comments of the Personal Communications Industry Association, filed May 20, 1998, at 6; Comments of PrimeCo Personal Communications, L.P., filed May 20, 1998, at 22; Comments of SBC Communications Inc., filed May 20, 1998, at 16; Comments of the Telecommunications Industry Association, filed May 20, 1998, at 29 [hereinafter "TIA Comments"]; and Comments of US West Inc., filed May 20, 1998, at 31.

⁶ DOJ Comments at 26.

⁷ CTIA Capability Comments at 19 and Exhibit 1 thereto. Of course, this logic has not detained DOJ in making their arguments in favor of a broad interpretation of CALEA for call-identifying information or the other wiretap administration capabilities DOJ seeks.

industry.⁸ The simple answer is that the Commission can rely on TR-45.2 for the technical standards development and then adopt the result by rule after public comment. The Commission can set a reasonable timeframe for the committee and require regular reports of progress to ensure adequate oversight should any concern be raised about the speed of progress. Thus, there is no impediment to remanding modifications, if any, to TR-45.2.

Of course, much depends on the clarity of any requirements the Commission might establish. We have seen evidence of how the failure to provide clear requirements on the punch list items has delayed the Enhanced Electronic Surveillance ("ESS") process. The impediment to date in development of standards for DOJ's punch list through the ESS process initiated by industry to meet law enforcement's desire for advanced surveillance features has been DOJ's failure to articulate its requirements. In particular, the DOJ has failed in its role as the editor of the ESS standard by not producing the basic requirements in text form so that contributions by committee members may be submitted against it.⁹ However, rather than

⁸ DOJ Comments at 24.

⁹ AT&T provides the Chair of the ESS Ad Hoc, as it did for the development of JSTD-025. Law enforcement provides the editor of the ESS standard. The editor is responsible for producing the basic requirements in text form so that contributions by committee members may be submitted against it. Through this "give and take" process, the requirements are refined and made specific so that unnecessary development work does not take place or technical ambiguity result. Only after this "Stage 1" text is refined does the standards body move to develop the more technical stages of the document and necessary protocols. This is precisely how JSTD-025 was developed and precisely what has been expected of law enforcement as editor of the ESS.

acknowledging the role it has played in delaying the ESS process, the DOJ recently has written two letters which remarkably protest its treatment in that process.¹⁰

It is not surprising, however, that DOJ has been reluctant to proceed in the normal course of the standards process. They are not interested in refining their requirements to eliminate ambiguity. Rather, despite Congress' express prohibition in CALEA,¹¹ the DOJ is interested in dictating the technical implementation. After all, DOJ has stated that the punch list capabilities "can be implemented in only one way, and the proposed rule . . . represents the only means of satisfying the capability in question."¹² The Commission should not be party to this attempt to circumvent CALEA's requirements by giving into the DOJ's demand that the Commission publish DOJ's proposed standard as the proposed rule for comment.

Notwithstanding the failure of law enforcement to take full advantage of the ESS process to advance standardization of the punch list, industry still views the process as necessary and valuable. If the Commission decides that any of the punch list items are required -- a decision AT&T urges against -- then standardization through the industry standards setting process already is underway. If the Commission rejects law enforcement's

¹⁰ See DOJ letter to Cheryl Blum, Chair, TIA Subcommittee TR-45.2 dated June 1, 1998, and DOJ letter to Peter Musgrove, Chair, TIA TR-45.2 ESS Ad Hoc Group, dated June 1, 1998. Attached hereto as Exhibit 1.

¹¹ Section 103 of CALEA precludes law enforcement from dictating the design of any facilities, equipment, services, features or system configuration. 47 U.S.C. § 1002(b)(1)(A). DOJ Comments at 27.

¹² DOJ Comments at 6.

claims, as it should, then industry still will proceed with the ESS process to make available, if technically feasible, the advanced surveillance services law enforcement desires and is willing to purchase in the ordinary course. Thus, rejection of law enforcement's claims does not mean that the surveillance features they desire will never be available.¹³ Accordingly, any new requirements, deletion of existing capabilities or errata to the standard should be remanded to TR-45.2.

II. SECTION 107 FACTORS MUST BE CONSIDERED ON THE RECORD

AT&T joins other commenters that note the absence of any factual record to support adding DOJ's punch list to the industry standard.¹⁴ Not only has the case not been made to support the need for the punch list, but the record actually establishes that the punch list will be extraordinarily complex and expensive to implement.¹⁵ This is precisely why the Commission, if it decides that any modification to the standard is necessary, must then engage

¹³ It is also noted that electronic surveillance continues today and that rejection of the punch list in no way will impede it. Indeed, if JSTD-025 were validated today by the Commission, electronic surveillance would be brought into the digital age quickly. DOJ's efforts to insinuate that JSTD-025 is some sort of step backwards for law enforcement should be rejected completely. AT&T specifically joins CTIA in its explanation of the benefits of the standard and how thoroughly it meets the requirements of Section 103 of CALEA. See CTIA Capability Comments at 6.

¹⁴ See e.g., Nextel Comments at 4; TIA Comments at 22.

¹⁵ See, e.g., AirTouch Comments at 9; Comments of Sprint Spectrum L.P. d/b/a Sprint PCS at 6.

in an on-the-record review to ensure that the changes are the most cost-efficient means of implementing CALEA.

AT&T also understands that DOJ continues to assert to the Commission that network-based, instead of switch-based, solutions to CALEA are or will be available to carriers within the compliance date, citing Bell Emergis and ADC NewNet as examples.¹⁶ AT&T Wireless Services has been informed that the ADC NewNet solution is NOT CALEA-compliant today and will NOT be capable of providing JSTD-025 functionality until at least the end of 1999.

It may well be that network-based solutions, alone or in combination with switch modifications, will prove cost-efficient or technically sound. However, there is no record to support these claims. The Commission should require, as part of fulfilling its Section 107 requirements, that an inquiry into so-called network-based alternatives be

¹⁶ See DOJ Ex Parte Presentation to Commission dated June 4, 1998. DOJ actually argues that any extension granted a carrier must terminate as soon as any CALEA solution is available. Thus, it serves DOJ's purpose in the extension proceeding to make such claims when the record absolutely refutes their assertions. Ameritech, in its extension petition, for example disclosed that it had advised the FBI in writing that the Bell Emergis solution was not technically feasible and offered to provide the detailed technical report of the reasons for the deficiency. See Petition for Extension of Time by Ameritech, filed April 24, 1998 ("Ameritech Petition") at 6. Bell Emergis itself has informed the Commission that a network-based solution is NOT currently feasible without switch alterations. Comments of Bell Emergis - Intelligent Signaling Technologies, filed May 8, 1998, at 3. The real point is that no CALEA-compliant technology will be available within the compliance period and whether it will be available at all through a network-based solution remains to be seen. The Commission should ensure that it is seen on the record.

considered on the record. No carrier or manufacturer desires to go to the cost and expense of developing a solution that is not reasonably achievable.

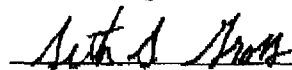
III. CONCLUSION

For all of the reasons noted above, AT&T continues to urge the Commission to reject the additional capabilities proffered by DOJ and to acknowledge the industry standard as a safe harbor for carriers. Should the Commission require any modifications to the standard, those changes should be remanded to TR-45.2, but not before the Commission establishes a record to support that the changes will indeed ensure the most cost-efficient implementation of CALEA.

Respectfully submitted,

AT&T Corp.

By



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June 12, 1998

EXHIBIT 1



U.S. Department of Justice

Federal Bureau of Investigation

CALEA Implementation Section
14800 Conference Center Drive, Suite 300
Chantilly, VA 20151

June 1, 1998

Ms. Cheryl Blum
Chair, TIA Subcommittee TR45.2
Lucent Technologies
1000 E. Warrenville Road
Naperville, Illinois 60566

Dear Ms. Blum:

Recently there has been some confusion regarding procedures employed at the ad hoc group dealing with Enhanced Surveillance Services (ESS). This may have led to possible inefficiencies and misunderstandings in the group. I think you may be able to offer some clarification in this regard. I would appreciate your assistance in correcting some mis-perceptions concerning documents contributed by the Federal Bureau of Investigation (FBI) CALEA Implementation Section (CIS) to the ESS Ad Hoc Group in Tucson, Arizona, and in Key West, Florida. I wonder if you would explain the procedures used in the engineering committee regarding submission of contributions.

At the Tucson meeting, representatives of CIS submitted Appendix 1 of the Department of Justice (DOJ) and FBI's Federal Communications Commission (FCC) Petition to the ESS Ad Hoc Group for consideration. However, the group indicated that such detailed information belonged in stages two and three of PN-4177, which they were not ready to address yet. Bowing to the wishes of the group, the contribution was disposed of as "for information only." Because this document was provided at the request of the group on such short notice, it did not have the cover sheet that we normally provide. However, since that date the ad hoc group has not acknowledged that the contribution was submitted by CIS. I'm sure that you recall both yourself and my representatives to the ad hoc group had asked Mr. Peter Musgrove, the ESS Ad Hoc Group chair, at the outset to document the proceedings of that group. We would appreciate confirmation that this matter has been documented accurately. I have enclosed the following copies of all law enforcement contributions to

Ms. Cheryl Blum

the ESS Ad Hoc Group to help you complete your records:

TR45.2.ESS/98.03.10.03	Law Enforcement Identified Capabilities
TR45.2.ESS/98.03.10.04	Law Enforcement Identified Capabilities-Additional Recommendations
TR45.2.ESS/98.03.10.05	Law Enforcement Editorial Recommendations
TR45.2.ESS/98.04.14.03	PN-4177 Recommended Baseline Document
TR45.2.ESS/98.04.14.07	FBI Petition to the FCC: Appendix 1 "Proposed Final Rule"
TR45.2.ESS/98.05.04.02	Law Enforcement Stage 1 Recommendations
TR45.2.ESS/98.05.04.08	PN-4177 Working Document
TR45.2.ESS/98.05.04.11	Letter from Mr. H. Michael Warren to Mr. Peter Musgrove

At the Tucson and Key West meetings, several members of industry had requested confirmation that participants in the meetings could recommend changes to PN-4177 through verbal comments during the meetings. Mr. Musgrove had stated that until the document was voted as baseline text, any verbal inputs could be used to amend the working document. However, contrary to that position, the group has stated that only written statements from law enforcement would be acceptable. In addition, although several detailed technical contributions have been submitted by law enforcement and not fully addressed, the group contends that law enforcement has not provided comprehensive contributions. At the same time, the group is requesting that law enforcement consent to allow the ad hoc group to write the technical specifications for law enforcement. Such contradictory actions appear confusing at the least and leave significant questions on the part of law enforcement.

Furthermore, the ad hoc group spent considerable time at the last meeting drafting a letter to me. This obviously caused valuable time and resources to be removed from crafting PN-4177 itself. The intent of that letter was to get law enforcement to vote on a contribution to the standard prior to that text being adequately addressed and supported by the group. Such a request appears to be a deviation from the usual standards process and denies the industry and law enforcement the opportunity to understand and respond to the implications of the choice of words used to state the specification. The lack of endorsement by members of the group to the statements attached to that letter may indicate a lack of full understanding and agreement on the technical details. It would be appreciated if you could clarify what procedures are to be used in the ESS Ad Hoc Group to produce a standard.

We are also concerned about statements by individuals in the group that law enforcement is somehow delaying the standards process. The fact that the group used much of the last meeting editing a letter rather than putting specifications into PN-4177 raises questions about the work plan for the group and the focus on technical specifications. Any comments or suggestions from any part of the telecommunications industry or your participating members may be directed to CIS outside the meeting. This

Ms. Cheryl Blum

would help maintain focus in the ad hoc itself and may facilitate efficient progress toward the standard. CIS remains committed to addressing any concerns brought to its attention and will continue to contribute in good faith to the standards process in the normal fashion.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Michael Warren", with a long horizontal flourish extending to the right.

H. Michael Warren
Senior Project Manager/Chief

Enclosures (7)



U.S. Department of Justice

Federal Bureau of Investigation

CALEA Implementation Section
14800 Conference Center Drive, Suite 300
Chantilly, VA 20151

June 1, 1998

Mr. Peter Musgrove
Chair, TIA TR45.2 ESS Ad Hoc Group
AT&T Wireless Services
5000 Carillon Point
Kirkland, WA 98033

Dear Mr. Musgrove:

As you know, it is in the best interest of the telecommunications industry and law enforcement to move toward a technical standard which addresses all issues related to CALEA as quickly as possible. As chair of the Enhanced Surveillance Services (ESS) Ad Hoc Group, it is incumbent upon you to ensure the timely delivery of a proposed standard for the Subcommittee TR45.2 to ballot. Certain recent actions of the ad hoc group leave me with questions about the process being used by the ad hoc group. While industry representatives to the ad hoc group point to law enforcement as having a slowing effect on the work, I note that much of the most recent meeting was used to draft a letter you signed, which contains factual errors and misrepresents my participation in the Tucson ESS meeting. I would like to take this opportunity to address certain of these issues.

At the outset of this ESS process, you committed to keeping an accurate record of the process and the details of moving toward the ESS standard. May I provide the following details that will assist in clarifying that record:

- Law enforcement representatives have clearly and repeatedly set forth the position that the nine punch list requirements are considered part of CALEA. We continue to participate in this industry standards effort while the FCC works on the proposed rule for CALEA capability.
- In my May 5, 1998 letter to you, I stated that law enforcement continues to support the nine punch list requirements as stated in our petition to the FCC. That petition contains a proposed rule that together with I-STD-025 provides all the information needed to develop a standard.

Mr. Peter Musgrove

- At the March 10, 1998 meeting in Austin, Texas, the ESS Ad Hoc Group chose not to address the detailed requirements provided in contribution 3 from FBI-CIS.
- At the April 14, 1998 meeting in Tucson, Arizona, the ESS Ad Hoc Group chose not to address the Appendix 1 from our FCC petition that FBI-CIS submitted as contribution 7.
- At the April 14, 1998 meeting in Tucson, several representatives from the industry provided their opinions on the five standardized interfaces. In that meeting I was clear that I did not agree with those voiced opinions. However, you state in your letter that it was impossible to limit the number of interfaces. Your characterization that an agreement was made at the Tucson meeting is incorrect and should be retracted.
- Contributions to the ESS standards process clearly show that law enforcement has contributed significant input for the ad hoc group (30-40 organizations present at each of the meetings):

Organization	Number of Contributions	Cumulative Pages Contributed
CTIA	1 document	1 page
Synacom Technology	5 documents	30 pages
Nortel	2 documents	10 pages
Siemens	3 documents	15 pages
Lucent Technologies	2 documents	7 pages
SBC Technology Resources	1 document	1 page
Perkins Cole	1 document	3 pages
FBI-CIS	8 documents	83 pages

- You have stated in several meetings that verbal comments to PN-4177 would be accepted, yet the group has stated that it would not accept verbal comments from law enforcement representatives.
- You have stated that the group can submit Stage 2 and Stage 3 contributions in parallel with Stage 1 contributions, but to date none of the Stage 2 or Stage 3 text proposed by law enforcement has been addressed.

Mr. Peter Musgrave

The ESS Ad Hoc Group spent much of the last meeting helping to draft the letter you sent to me and the attachment to that letter. This was time during which no substance was added to the PN-4177 working document. This shift of focus away from technical and engineering discussions is unlikely to assist in expeditious movement toward a standard. The apparent intent of that letter was to get law enforcement to vote on a contribution to the standard prior to that text being adequately addressed and supported by the group. Such a request appears to be a deviation from the usual standards process and denies the industry and law enforcement the opportunity to understand and respond to the implications of the choice of words used to state each specification. The lack of endorsement by members of the ESS Ad Hoc Group to the statements attached to that letter may indicate a lack of full understanding and agreement on the technical details.

It would assist us a great deal if you would clarify the following within the ad hoc group:

- Correct the record to identify FBI-CIS as the author of contribution 7 at the Tucson meeting.
- Clarify whether written contributions are the sole basis for changes to PN-4177.
- Clarify whether it is necessary for FBI-CIS to vote on the contents of PN-4177 prior to freezing of the standard.

As you can see by the above, law enforcement continues to make good faith efforts to participate in the process according to industry rules. Any comments or suggestions from any part of the telecommunications industry or your participating members may be directed to CIS outside the meeting. This would help maintain focus in the ad hoc itself and may facilitate efficient progress toward the standard. CIS remains committed to addressing any concerns brought to its attention and will continue to contribute in good faith to the standards process in the normal fashion.

Sincerely,



H. Michael Warren
Senior Project Manager/Chief

cc: Cheryl Blum, TR45.2, Chair
Wayne Zauch, T1S1 Chair
Asok Chatterjee, T1P1 Chair
John McDonough, T1M1 Chair

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 12th day of June, 1998, a copy of the foregoing "Reply Comments of AT&T Corp. Regarding Scope of CALEA Capabilities" was served by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.


Rena Martens

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